

APPEAL NO. 040176
FILED MARCH 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 11, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury; that the date of the claimed injury is _____; that the claimant did not give timely notice of the claimed injury to her employer as required by Section 409.001; and that the claimant did not have disability. The claimant appeals these determinations and requests that the Appeals Panel take into consideration that her witness, RW, was unable to testify at the hearing. The appeal file contains no response from the respondent (carrier).

DECISION

Affirmed.

The disputed issues in this case involved factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

With regard to the claimant's request that the Appeals Panel consider that RW was unable to testify, we note that the claimant did not raise the issue of the unavailability of her witness at the hearing. Consequently, any objection the claimant has regarding the unavailability of RW at the hearing was waived for appeal purposes.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Chris Cowan
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge